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6 Attorneys for Defendants
7 JPMORGAN CHASE BANK, N.A.,
8 erroneously sued as JPMORGAN
CHASE & CO., and CHASE BANK
USA, N.A.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BARRY WILLIS, COREY) Case No. 2:12-cv-10252-DMG-SH
12 GOLDSTEIN, PAUL STEMPEL, and) [Assigned to the Hon. Dolly M. Gee]
13 CARRIE COUSER, individually and on)
14 behalf of all others similarly situated,)
15 Plaintiffs,) **ANSWER OF DEFENDANTS TO**
16 v.) **PLAINTIFFS' SECOND AMENDED**
17 JPMORGAN CHASE & CO., CHASE) **COMPLAINT**
18 BANK (USA) N.A.,)
19 Defendants.)

1 JPMorgan Chase Bank, N.A., erroneously sued as JP Morgan Chase & Co.,
2 and Chase Bank USA, N.A. (“Defendants”), through their undersigned counsel,
3 answer the Second Amended Complaint (“SAC”) of plaintiffs Barry Willis, Corey
4 Goldstein, Paul Stemple and Carrier Couser (“Plaintiffs”), filed on January 11, 2013,
5 as follows:

ANSWER TO INTRODUCTION

7 1. Answering Paragraph 1 of the SAC, Defendants admit that Plaintiffs
8 purport to bring this action for alleged violations of the Telephone Consumer
9 Protection Act, 47 U.S.C. § 227, et seq. (the “TCPA”). Except as expressly
10 admitted, Defendants deny each and every allegation set forth in Paragraph 1.

11 2. Answering Paragraph 2 of the SAC, Defendants state that this paragraph
12 contains legal conclusions to which no response is required; to the extent a response
13 is required, Defendants state that the TCPA, the accompanying legislative history
14 and decisional law speak for themselves, and Defendants deny any allegations that
15 are inconsistent therewith.

16 3. Answering Paragraph 3 of the SAC, Defendants state that this paragraph
17 contains legal conclusions to which no response is required; to the extent a response
18 is required, Defendants state that the TCPA, the accompanying legislative history
19 and decisional law speak for themselves, and Defendants deny any allegations that
20 are inconsistent therewith.

21 4. Answering Paragraph 4 of the SAC, Defendants state that this paragraph
22 contains legal conclusions to which no response is required; to the extent a response
23 is required, Defendants state that the TCPA, the accompanying legislative history
24 and decisional law speak for themselves, and Defendants deny any allegations that
25 are inconsistent therewith.

26 5. Answering Paragraph 5 of the SAC, Defendants state that this paragraph
27 contains legal conclusions to which no response is required; to the extent a response

1 is required, Defendants state that the TCPA, the accompanying legislative history
2 and decisional law speak for themselves, and Defendants deny any allegations that
3 are inconsistent therewith.

4 6. Answering Paragraph 6 of the SAC, Defendants state that this paragraph
5 contains legal conclusions to which no response is required; to the extent a response
6 is required, Defendants state that the TCPA, the accompanying legislative history
7 and decisional law speak for themselves, and Defendants deny any allegations that
8 are inconsistent therewith. Defendants further deny that any purported class can be
9 certified.

ANSWER TO JURISDICTION AND VENUE

11 7. Answering Paragraph 7 of the SAC, Defendants admit that this Court
12 possesses subject matter jurisdiction over this action, but deny any liability to
13 Plaintiffs and deny that Plaintiffs are entitled to any relief whatsoever.

14 8. Answering Paragraph 8 of the SAC, Defendants do not challenge venue
15 for purposes of this action, but deny any liability to Plaintiffs and deny that Plaintiffs
16 are entitled to any relief whatsoever.

ANSWER TO PARTIES

18 9. Answering Paragraph 9 of the SAC, Defendants lack knowledge or
19 information sufficient to form a belief as to the truth of the allegations contained
20 therein and, on that basis, deny the allegations in Paragraph 9.

21 10. Answering Paragraph 10 of the SAC, JP Morgan Chase Bank, N.A.
22 admits that it is a national bank. Except as expressly admitted, JP Morgan Chase
23 Bank, N.A. denies each and every allegation set forth in Paragraph 10.

24 11. Answering Paragraph 11 of the SAC, Chase Bank USA, N.A. admits
25 that it is a national bank. Except as expressly admitted, Chase Bank USA, N.A.
26 denies each and every allegation set forth in Paragraph 11.

ANSWER TO FACTUAL ALLEGATIONS

12. Answering Paragraph 12 of the SAC, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, deny the allegations in Paragraph 12.

13. Answering Paragraph 13 of the SAC, Defendants deny that they fit within the definition located at 47 U.S.C. § 153 (10).

14. Answering Paragraph 14 of the SAC, Defendants admit that they conduct certain business in the State of California, County of Los Angeles.

15. Answering Paragraph 15 of the SAC, Defendants deny each and every allegation set forth in Paragraph 15.

16. Answering Paragraph 16 of the SAC, Defendants deny each and every allegation set forth in Paragraph 16.

17. Answering Paragraph 17 of the SAC, Defendants deny each and every allegation set forth in Paragraph 17.

18. Answering Paragraph 18 of the SAC, Defendants deny each and every allegation set forth in Paragraph 18.

19. Answering Paragraph 19 of the SAC, Defendants deny each and every allegation set forth in Paragraph 19.

20. Answering Paragraph 20 of the SAC, Defendants deny each and every allegation set forth in Paragraph 20.

21. Answering Paragraph 21 of the SAC, Defendants deny each and every allegation set forth in Paragraph 21.

22. Answering Paragraph 22 of the SAC, Defendants deny each and every allegation set forth in Paragraph 22.

23. Answering Paragraph 23 of the SAC, Defendants deny each and every allegation set forth in Paragraph 23.

1 24. Answering Paragraph 24 of the SAC, Defendants deny each and every
2 allegation set forth in Paragraph 24.

3 25. Answering Paragraph 25 of the SAC, Defendants deny each and every
4 allegation set forth in Paragraph 25.

5 26. Answering Paragraph 26 of the SAC, Defendants deny each and every
6 allegation set forth in Paragraph 26.

7 27. Answering Paragraph 27 of the SAC, Defendants lack knowledge or
8 information sufficient to form a belief as to the truth of the allegations contained
9 therein and, on that basis, deny the allegations in Paragraph 27.

10 28. Answering Paragraph 28 of the SAC, Defendants deny that the
11 allegations are encompassed by 47 U.S.C. § 227(b)(1)(A)(i).

12 29. Answering Paragraph 29 of the SAC, Defendants deny that they made
13 any calls to Plaintiffs as defined by 47 U.S.C. § 227(a)(4).

14 30. Answering Paragraph 30 of the SAC, Defendants deny each and every
15 allegation set forth in Paragraph 30.

16 31. Answering Paragraph 31 of the SAC, Defendants deny each and every
17 allegation set forth in Paragraph 31.

18 **ANSWER TO CLASS ACTION ALLEGATIONS**

19 32. Answering Paragraph 32 of the SAC, Defendants admit that Plaintiffs
20 purport to bring this action on behalf of themselves and on behalf of a class of all
21 other persons that purportedly are similarly situated. Defendants deny that any class
22 should be certified in this action and that this action is appropriate for class
23 treatment. Except as expressly stated, Defendants deny each and every remaining
24 allegation set forth in Paragraph 32.

25 33. Answering Paragraph 33 of the SAC, Defendants admit that Plaintiffs
26 purport to bring this action on behalf of themselves and on behalf of a class of all
27 other persons that purportedly are similarly situated. Defendants deny that any class

1 should be certified in this action and that this action is appropriate for class
2 treatment. Except as expressly stated, Defendants deny each and every remaining
3 allegation set forth in Paragraph 33.

4 34. Answering Paragraph 34 of the SAC, Defendants admit that Plaintiffs
5 purport to bring this action on behalf of themselves and on behalf of a class of all
6 other persons that purportedly are similarly situated. Defendants deny that any class
7 should be certified in this action and that this action is appropriate for class
8 treatment. Except as expressly stated, Defendants deny each and every remaining
9 allegation set forth in Paragraph 34.

10 35. Answering Paragraph 35 of the SAC, Defendants deny each and every
11 allegation set forth in Paragraph 35.

12 36. Answering Paragraph 36 of the SAC, Defendants admit that Plaintiffs
13 purport to bring this action on behalf of themselves and on behalf of a class of all
14 other persons that purportedly are similarly situated. Defendants deny that any class
15 should be certified in this action and that this action is appropriate for class
16 treatment. Except as expressly stated, Defendants deny each and every remaining
17 allegation set forth in Paragraph 36.

18 37. Answering Paragraph 37 of the SAC, Defendants deny each and every
19 allegation set forth in Paragraph 37.

20 38. Answering Paragraph 38 of the SAC, Defendants deny each and every
21 allegation set forth in Paragraph 38.

22 39. Answering Paragraph 39 of the SAC, Defendants deny each and every
23 allegation set forth in Paragraph 39.

24 40. Answering Paragraph 40 of the SAC, Defendants deny each and every
25 allegation set forth in Paragraph 40.

1 41. Answering Paragraph 41 of the SAC, Defendants lack knowledge or
2 information sufficient to form a belief as to the truth of the allegations contained
3 therein and, on that basis, deny the allegations in Paragraph 41.

4 42. Answering Paragraph 42 of the SAC, Defendants deny each and every
5 allegation set forth in Paragraph 42.

6 43. Answering Paragraph 43 of the SAC, Defendants deny each and every
7 allegation set forth in Paragraph 43.

ANSWER TO FIRST CAUSE OF ACTION

9 44. Answering Paragraph 44 of the SAC, Defendants incorporate their
10 responses to the allegations in Paragraphs 1 through 43, inclusive, as if fully set forth
11 herein.

12 45. Answering Paragraph 45 of the SAC, Defendants deny each and every
13 allegation set forth in Paragraph 45.

14 46. Answering Paragraph 46 of the SAC, Defendants deny each and every
15 allegation set forth in Paragraph 46.

16 47. Answering Paragraph 47 of the SAC, Defendants deny each and every
17 allegation set forth in Paragraph 47.

ANSWER TO SECOND CAUSE OF ACTION

19 48. Answering Paragraph 48 of the SAC, Defendants incorporate their
20 responses to the allegations in Paragraphs 1 through 47, inclusive, as if fully set forth
21 herein.

22 49. Answering Paragraph 49 of the SAC, Defendants deny each and every
23 allegation set forth in Paragraph 49.

24 50. Answering Paragraph 50 of the SAC, Defendants deny each and every
25 allegation set forth in Paragraph 50.

26 51. Answering Paragraph 51 of the SAC, Defendants deny each and every
27 allegation set forth in Paragraph 51.

1 **ANSWER TO PRAYER FOR RELIEF**

2 Answering Plaintiffs' Prayer for Relief as set forth on Pages 9 and 10 of the
3 SAC, Defendants deny that Plaintiffs and the purported, alleged putative class are
4 entitled to any relief whatsoever against Defendants.

5 **ANSWER TO JURY TRIAL DEMAND**

6 52. Answering Paragraph 52 of the SAC, Defendants admit that Plaintiffs
7 seek a trial by jury.

8 **AFFIRMATIVE DEFENSES**

9 Without assuming the burden of proof where it otherwise lies with Plaintiffs,
10 Defendants assert the following affirmative defenses:

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure To State A Claim)**

13 The SAC fails to state a claim upon which relief can be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Consent)**

16 Defendants are informed and believe, and on that basis allege, that Plaintiffs
17 and/or any person they purport to represent, are barred, in whole or in part, from
18 maintaining the alleged causes of action because they provided "prior express
19 consent" within the meaning of the TCPA, 47 U.S.C. §227(b)(1)(A), for all calls
20 allegedly placed to their cell phone number by any alleged automatic telephone
21 dialing system.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Estoppel)**

24 The SAC is barred, in whole or in part, by the conduct, actions and inactions
25 of Plaintiffs, and/or any person they purport to represent, which amount to and
26 constitute an estoppel of the claims and any relief sought thereby.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

The SAC is barred, in whole or in part, by the conduct, actions and inactions of Plaintiffs, and/or any person they purport to represent, which amount to and constitute a waiver of any right or rights Plaintiffs, and/or any person they purport to represent, may or might have in relation to the matters alleged in the SAC.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs, and/or any person they purport to represent, unreasonably have delayed taking action in connection with the alleged claims, causing substantial prejudice to Defendants, and such claims therefore are barred pursuant to the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

To the extent that Plaintiffs, and/or any person they purport to represent, have suffered any damage as a result of the matters alleged in the SAC, Plaintiffs, and/or any person they purport to represent, have failed to mitigate those damages and the claims therefore are barred, in whole or in part.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs and/or any person they purport to represent, may obtain no relief under the SAC by reason of the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

(Setoff)

Defendants allege, based upon information and belief, that they are entitled to a set off based upon Plaintiffs' breach of contract for failure to pay the total sum due on their account(s) with Defendants.

NINTH AFFIRMATIVE DEFENSE

(Not Knowing Or Willful)

Plaintiffs, and/or any person they purport to represent, are precluded from any recovery from Defendants for a willful and knowing violation of the TCPA because any such violation (which Defendants deny occurred) would not have been willful or knowing.

TENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs' claims, and/or the claims of the class they purport to represent, are barred in whole or in part by the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

(Due Process)

The imposition of liability and/or statutory damages under the TCPA as sought in the SAC would violate provisions of the United States Constitution, including the Due Process Clause.

TWELFTH AFFIRMATIVE DEFENSE

(Independent, Intervening Conduct)

Plaintiffs, and/or any person they purport to represent, are barred from recovery in that any damage sustained by Plaintiffs, and/or any person they purport to represent, was the direct and proximate result of the independent, intervening, negligent and/or unlawful conduct of independent third parties or their agents, and not any act or omission on the part of Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

(Agreement to Arbitrate)

To the extent Plaintiffs themselves, and/or any person they purport to represent, are holders of accounts with defendant JPMorgan Chase Bank, N.A., erroneously sued as JP Morgan Chase & Co. (“JPMC”), each account holder’s

1 agreement (including any JPMC-issued accounts held by Plaintiffs) is governed by a
2 written arbitration agreement encompassing the claims alleged in the SAC, which
3 may be invoked by Defendants at their election.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 **(Reservation of Rights)**

6 Defendants expressly reserve their right to assert such other and further
7 affirmative defenses as may be appropriate.

8 **PRAAYER**

9 **WHEREFORE**, Defendants pray as follows:

10 That Plaintiffs and/or any person they purport to represent take nothing by
11 virtue of this action;

12 For judgment to be entered against Plaintiffs and in favor of Defendants;

13 That Defendants be awarded their attorneys' fees and costs incurred in this
14 action, and any other amounts recoverable under law; and

15 That this Court grant Defendants such other relief the Court may deem just
16 and proper.

17 Dated: October 21, 2013

18 STROOCK & STROOCK & LAVAN LLP
19 JULIA B. STRICKLAND
LISA M. SIMONETTI
ARJUN P. RAO

20 By: _____ /s/ Julia B. Strickland
21 _____
Julia B. Strickland

22 Attorneys for Defendants

23 JPMORGAN CHASE BANK, N.A.,
24 erroneously sued as JPMORGAN
CHASE & CO., and CHASE BANK
25 USA, N.A.
26
27

CERTIFICATE OF SERVICE

2 I hereby certify that on October 21, 2013, a copy of the foregoing **ANSWER**
3 **OF DEFENDANTS TO PLAINTIFFS' SECOND AMENDED COMPLAINT**
4 was filed electronically. Notice of this filing will be sent by e-mail to all parties by
5 operation of the court's electronic filing system or by mail to anyone unable to
6 accept electronic filing as indicated on the Notice of electronic Filing. Parties may
7 access this filing through the court's EM/ECF System.

/s/ Julia B. Strickland

Julia B. Strickland

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